IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.4555 OF 2006

Dilip Kumar ..Applicant

Vs.

State of Maharashtra & Anr. ..Respondents

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Mr.A.S.Khan and Associates for Applicant
Mr.A.R.Patil A.P.P. for the State

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**CORAM: SMT.V.K.TAHILRAMANI,J.**
**DATE : DECEMBER 5, 2007**

**P.C.**

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State. None appears for the Respondent No.2 though served.

2. The process was issued against the applicant under Section 138 read with Section 141 of the Negotiable Instruments Act by the learned Chief Metropolitan Magistrate 30th Court, Ballard Pier, Mumbai in Case No. 2727/S/1997. The applicant preferred application for recalling of process before the learned Magistrate. The said application came to be rejected. Being aggrieved thereby, the applicant preferred revision before

the Sessions Court for Greater Bombay. The Sessions Court by order dated 1.11.2004, rejected the said revision application. The learned Sessions Judge held that in view of the decisions of the Supreme Court in the Case of **Adalat Prasad V. Rooplal Jindal, 2004(2) Bom.C.R. (Cri.) (S.C.) 857: 2004(4) Mh.L.J. 274** and **Subramanium Sethuraman V. State of Maharashtra, 2005(1) Bom.C.R. (Cri.) (S.C.)189: 2005(1) Mh.L.J. 626**, the learned Magistrate did not have the power to recall the process, hence, there was no infirmity in the order of the learned Magistrate rejecting the application for recall of process and on this ground, the revision came to be rejected. The prayer of the applicant for quashing of process was also not considered by the learned Sessions Judge as the learned Sessions Judge was of the opinion that the Sessions Court was not moved directly after issuance of the process by the learned Magistrate.

3. The earlier position was that applications for recall of process were being entertained by the Magistrate in view of the decision of the Supreme Court in the case of **K.M.Mathew V. State of**

**Kerala, 1992(1) S.C.C. 217** hence, the applicant also preferred an application for recall of process before the learned Magistrate. However, in the meanwhile, the decisions in the case of **Adalat Prasad** and **Subramanium Sethuraman (supra)**, came to be rendered by the Apex Court wherein it was held that a Magistrate cannot review his order and recall process. Looking to the legal position in these two decisions, the learned Sessions Judge rejected the revision.

4. However, for the reasons recorded in the order passed by this Court in the case of **V.K.Jain Vs. P.V.Padode; 2005(3) Mh.L.J.778,** which has been upheld by the Hon'ble Apex Court I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. In this view of the matter and in the interest of justice, liberty is granted to the applicant to

prefer a fresh revision before the concerned Sessions Court challenging the order of issuance of process by the learned Magistrate, within six weeks. The learned Sessions Judge shall hear the necessary parties and dispose of the said revision on merits. Delay if any, in preferring the revision, be condoned in the interest of justice.

6. Application is disposed of.

[SMT.V.K.TAHILRAMANI,J.]